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# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1941.

MANLEY OIL CORPORATION, a Corporation,  
L. B. MANLEY, J. C. SHOEMATE, FLOR-  
ENCE SHOEMATE, HELMERICH &  
PAYNE, INC., a Corporation, ED MORTON  
and F. M. LOPER, Petitioners,

vs.

SHELL OIL COMPANY, Incorporated, a Cor-  
poration, Respondent.

1150  
No. ....

## PETITION FOR WRIT OF CERTIORARI To the United States Circuit Court of Appeals for the Seventh Circuit and BRIEF IN SUPPORT THEREOF.

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April 14, 1942.



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# SUPREME COURT OF THE UNITED STATES.

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MANLEY OIL CORPORATION, a Corporation, L. B. MANLEY, J. C. SHOEMATE, FLOR- ENCE SHOEMATE, HELMERICH & PAYNE, INC., a Corporation, ED MORTON and F. M. LOPER,	} No. ....
Petitioners,	
vs.	
SHELL OIL COMPANY, Incorporated, a Cor- poration,	} Respondent.

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## PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the  
Seventh Circuit.

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To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:

Comes now Manley Oil Corporation, a corporation, L. B. Manley, J. C. Shoemate, Florence Shoemate, Helmerich & Payne, Inc., a corporation, Ed Morton and F. M. Loper, and respectfully petition this Honorable Court to grant a writ of certiorari to review the opinion and decree of the United States Circuit Court of Appeals for the Seventh Circuit, rendered and entered on the 3rd day of December, 1941, in the case lately pending in said United States Circuit Court of Appeals for the Seventh Circuit, styled Shell Oil Company, Incorporated, a corporation, Plaintiff, Appel-

lant, v. Manley Oil Corporation, a corporation, et al., Defendants, Appellees, being No. 7715 of causes on the docket of said United States Circuit Court of Appeals for the Seventh Circuit, reversing the decree of the United States District Court for the Eastern District of Illinois, in said cause in favor of the respondent and against your petitioners herein; which said decree of the United States Circuit Court of Appeals for the Seventh Circuit became final on the 23rd day of January, 1942, by the denying by that court of petitioners' petition for a rehearing.

### **OPINIONS IN THE COURTS BELOW.**

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit in said cause of Shell Oil Company, Incorporated, a corporation, Plaintiff-Appellant, v. Manley Oil Corporation, a corporation, et al., Defendants-Appellees, which petitioners here seek to have reviewed, is reported in 124 Federal (2nd), at page 714 (Federal Reporter, second series, advance sheet, February 23, 1942, page 714), and appears on pages 270 to 275 of the transcript of the printed record filed herewith. The opinion of the District Court is on pages 168 to 175 of the transcript of record filed herein.

### **SUMMARY STATEMENT OF THE MATTER INVOLVED.**

This is a suit in equity brought in the United States District Court for the Eastern District of Illinois, by Shell Oil Company, Incorporated, a corporation, the respondent herein, against Manley Oil Corporation, a corporation, et al., petitioners herein (for injunctive relief against petitioner herein) from drilling for oil and gas upon a certain two-acre tract of land located in the Northwest corner of the Southeast quarter of the Southeast quarter of Section Twenty-four (24), Township Six (6) South, Range Two

(2) East of the Third Principal Meridian, Franklin County, Illinois. The sole ground of Federal jurisdiction is based upon diversity of citizenship of parties.

For a correct appreciation of the background of the instant case and the far-reaching local importance of the decision therein, we deem as proper a brief resume of the factual data supported by the record in this cause.

About the year 1902 it was discovered that the lands of Franklin County, Illinois, were underlain by a very valuable deposit of coal. Immediately after the discovery of coal large blocks of coal lands were purchased by mining companies and operations for their development commenced.

Upon the discovery of coal in the county two values came into existence, which values were locally and in common parlance designated "coal" and "surface."

As the free interchange of property continued among buyers and sellers of real estate after the discovery of coal the term "surface" represented the fee estate, other than the coal and mining privileges previously conveyed or reserved (see Tr. 127-128).

Calling the court's attention to the far-reaching importance of the decision in this case, thousands of pieces of real estate have changed hands in this coal field (Tr. 121), where the terms used as descriptive of the grant, were "surface" or "surface only," subject to a prior conveyance of coal, etc., or subject to a reservation of the coal, etc. (Tr. 124).

Oil was not discovered in Franklin County until 1940 (Tr. 137).

On August 27, 1907, Thomas M. McKemie, being the owner of the forty-acre tract of land of which the two acres involved in this litigation is a part, subject to a prior conveyance of the coal underlying said land to Benton

Coal Company, sold to his brother-in-law, Walter S. Mooneyham, as a site for the location of a home, the two-acre tract here in controversy by warranty deed in statutory form, said deed being in words and figures as follows:

**“Warranty Deed.**

“The Grantors, Thomas M. McKemie and Lou McKemie, his wife, of the Town of Benton in the County of Franklin and State of Illinois, for and in consideration of Two Hundred Dollars in hand paid, conveys and Warrants to Walter S. Mooneyham of the Town of Browning, County of Franklin and State of Illinois the following described Real Estate, to-wit:

“The Surface only of a tract of land described as follows: Beginning at the Northwest corner of the Southeast quarter of the Southeast quarter of Section 24, Town 6 South, and in Range 2 East of the 3rd P. M. Thence South 23 rods to the center of the public road as now located, thence East along the center of said public road 14 rods, thence North 23 rods to the North line of said S. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$ , thence West to the place of beginning, containing 2 acres more or less. This deed is made subject to a certain deed to the Benton Coal Company recorded in deed record ‘45,’ page 10.

“Situated in the County of Franklin, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State.

“Dated this 27th day of August, A. D. 1907.

Thomas M. McKemie (Seal)  
Lou McKemie (Seal)

“Signed, sealed and delivered in  
presence of:

.....



"State of Illinois, }  
Franklin County. } ss.

"I, W. F. Burkitt, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Thomas M. McKemie and Lou McKemie, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of Homestead.

"Given under my hand and Notary seal, this 27th day of August, A. D. 1907.

W. F. Burkitt,  
Notary Public."

N. P.

"Filed for record this the 12" day of September, A. D. 1907 at 4 o'clock P. M.

J. J. Hill,  
Recorder."

The right, title and interest acquired by Walter S. Mooneyham, by virtue of the above-mentioned deed, by mesne conveyances, is now vested in J. C. Shoemate and Florence Shoemate, as joint tenants, who now, and at all times since 1930, have occupied same as a homestead.

On January 11, 1941, the petitioners, J. C. Shoemate and Florence Shoemate, executed and delivered to Manley Oil Corporation an oil and gas lease on said two-acre tract upon which Manley Oil Corporation commenced drilling operations for oil and gas.

The respondent claims sole right and title to the oil and gas under said two-acre tract and the right to injunctive relief by virtue of an oil and gas lease given by Thomas M.

McKemie and others to E. S. Adkins on June 27, 1940 (Tr. 62-69), which lease was assigned by Adkins to respondent (Tr. 69-70).

The trial was by the Court, and a decree was rendered in favor of petitioners and appellees below and against the respondent and appellant below.

An appeal from said decree was taken by the respondent and appellant below to the United States Circuit Court of Appeals for the Seventh Circuit, which reversed the decree of the District Court.

The principal questions involved on said appeal were:

(a) Whether the language employed in a warranty deed from McKemie to Mooneyham, as descriptive of the estate conveyed in said deed, had a settled legal meaning in the State of Illinois.

(b) Whether the District Court erred in receiving in evidence in the trial of said cause certain extrinsic testimony showing that the language employed in said deed had acquired, by local usage and custom, a local or colloquial meaning, which revealed the intention of the grantor in said deed at the time of said conveyance.

Which questions were decided by said United States Circuit Court of Appeals for the Seventh Circuit and materially affected the determination of said appeal.

That the decision of the United States Circuit Court of Appeals for the Seventh Circuit was rendered on December 3, 1941, following which decision and within the time required under the rules of said court petitioners herein filed a petition for rehearing.

That on January 23, 1942, the United States Circuit Court of Appeals for the Seventh Circuit rendered a decision denying the said petition for rehearing.

The duly certified record, including all the proceedings in said cause in said United States District Court for the Eastern District of Illinois, and in the United States Circuit Court of Appeals for the Seventh Circuit, is filed herewith under separate cover.

### **JURISDICTION OF THIS COURT.**

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by Act of February 13, 1925, and that portion of Subsection (B) of Paragraph five (5) of Rule thirty-eight (38) of Revised Rules of the Supreme Court of the United States, made in pursuance thereof, viz.:

“Where a circuit court of appeals has decided an important question of local law in a way probably in conflict with applicable local decisions.”

This cause originated in the United States District Court for the Eastern District of Illinois and was reviewed on appeal by the United States Circuit Court of Appeals for the Seventh Circuit.

The opinion of the Circuit Court of Appeals was filed on December 3, 1941, but petition for rehearing was filed in time allowed under rules of said court and denied, and final decree was entered on January 23, 1942.

Cases thought to sustain the jurisdiction are:

Railroad Commission of Texas v. Pullman Company  
et al., 61 Supreme Court Reporter 643-646;  
Thompson v. Magnolia Petroleum Company, 309  
U. S. 478-484.

## QUESTIONS PRESENTED.

The questions presented by petitioners' petition herein for a writ of certiorari are:

(1) Whether the question of law presented by this record is an important question of local law in the State of Illinois, and, if so, has the question been decided by the Supreme Court of Illinois.

(2) Whether the Federal Court in a case, where by the accident of diversity of citizenship of parties litigant it has jurisdiction of the parties, to assume to establish the local law of the State upon a locally important question, where the courts of the State in which the case arises have not passed upon the legal question presented.

(3) Should the Federal Court direct that this case be held in abeyance until the local law of the State of Illinois, on the questions of law presented, be finally settled by the Supreme Court of the State of Illinois.

(4) Whether the language employed in the warranty deed from McKemie to Mooneyham (Tr. 82) as descriptive of the estate conveyed in said deed has acquired a settled legal meaning in the State of Illinois.

(5) Whether the District Court erred in receiving in evidence in the trial of said cause certain extrinsic testimony showing that the specific language employed in said deed had acquired by local usage and custom a local or colloquial meaning, which revealed the intention of the grantors in said deed at the time of said conveyance.

## **REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.**

(1) The correct determination of this case calls for a decision upon the interpretation of instruments of conveyance, in which the law of the State of Illinois is supreme, and which question is of far reaching local importance, and upon which question the courts of Illinois have not directly spoken.

(2) The sole ground of federal jurisdiction in this case is based upon the diversity of citizenship of the parties litigant, and in this case the decision with which the Federal Court is faced calls for interpretation of instruments of conveyance in accordance with Illinois law.

Neither statutes nor decisions of Illinois have been pointed to which are clearly applicable. On the contrary, the United States Circuit Court of Appeals for the Seventh Circuit in the opinion in this case has said:

“Since the Illinois Courts have not passed upon this question, we accept the rule as set forth in the Jividen case from Ohio rather than the Ramage case from West Virginia.”

The difficulties, therefore, of determining just what should be the decision under the law of Illinois are persuasively indicated by the different results reached in the instant case by the learned trial court and the Honorable Court of Appeals.

Unless the matter is referred to the State Courts, upon subsequent decision by the Supreme Court of Illinois it may appear that rights in local property of parties to this proceeding have, by the accident of federal jurisdiction, been determined contrary to the law of the State which in such matters is supreme.

**PRAYER.**

Wherefore, petitioners pray that a writ of certiorari be issued by this Court directed to the United States Circuit Court of Appeals for the Seventh Circuit to the end that the said opinion and decree of said United States Circuit Court of Appeals for the Seventh Circuit in said cause of Shell Oil Company, Incorporated, a corporation, appellant, v. Manley Oil Corporation, a corporation, et al., defendants, No. 7715, be reviewed by this Court, as provided by law, and that upon such review said decree be reversed, and that petitioners have such other relief as to this Court may seem appropriate.

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